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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,942	11/05/2001	Wayne C. Boncyk	EVRY-0003	9193

7590 01/25/2005
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EXAMINER

SHERALI, ISHRAT I

ART UNIT PAPER NUMBER

2621

DATE MAILED: 01/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/992,942	Applicant(s) BONCYK ET AL.	
	Examiner Sherali Ishrat	Art Unit 2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 22 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. This action is in response to Applicant's arguments received on 09/20/2004.

Applicant's arguments with regard to rejection under 35 USC §112 first paragraph are fully considered. However based on the written disclosure of the instant application and both provisional applications, arguments are not persuasive. See the remarks section.

Applicant's arguments with regard to art rejection are fully considered. However they are not persuasive with respect to applied art rejection. See the remarks section.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 35 is rejected under 35 USC 112 first paragraph as failing to comply with written description requirement.

Regarding claim 35, lines 1-3, claim recite " receive from telephony device a second image containing the objected and to further identify the object as function of data contained in both images". These limitations lacks support in the specification. Applicant has argued in the response received on 09/20/2004 that provisional application states: If there is no match within a specified tolerance, then a message is returned indicating this situation, and the user is advised to try to re-image under better conditions". Examiner has not found such statement in the provisional application.

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Furthermore statement "If there is no match within a specified tolerance, then a message is returned indicating this situation, and the user is advised to try to re-image under better conditions" does not mean identify the object as function of data contained in both images. Statement means identify object based on the first image or identify the object based on the second image [re-image of the object under better condition].

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 31-34, 36-47 are rejected under 35 U.S.C. 102(e) as being anticipated by Cambier et al. (US 6532298).

Regarding claim 31, Cambier discloses a camera that captures an image (Cambier, figure 3, block 165, and Cambier in col. 5, lines 66-67, states "The imager of Figures 1 and 2A is used in a system to identify the iris image". This corresponds to a camera that captures an image);

a telephony device programmed to transmit at least portion of the image to distance service (Cambier, in figure 3 [blocks 170, 175] shows telephony device programmed to transmit image to distance service [iris image to is transmitted to cellular provider], and Cambier states in col. 6, lines 4-6, "template of iris is

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transmitted to cellular provider such as central station e.g Mobile Telephone Switching Office". This corresponds to a telephony device programmed to transmit at least portion of the image to distance service);

the service programmed to receive the image and identify an object within the image (Cambier, figure 3 [blocks 175, 180 and 185], Cambier in col. 6, lines 7-10 states "Mobile telephone service or other comparison controller system receives iris template and compared with iris template stored in the memory or database for identification and authorization of the user". This corresponds to the service programmed to receive the image identify an object within the image);

associate the object with information address (Cambier in col. 6, lines 12-15, states " If the user is authorized , the cellular provider enables the call placement" which corresponds to associate the object with information address [telephone number] because cellular telephone service uses the telephone number of authorized user to place the call);

return the address to the telephony device (Cambria, in col. 6, lines 12-17, states " If the user is authorized , the cellular provider enables the call placement, the user is provided access to the asset" which corresponds to return the address to the telephony device);

the telephony device further programmed to utilize address to retrieve an item of information related to the object (Cambria, in col. 6, lines 9-12, shows code of authorized subscriber is compared to pre existing codes in the memory or database i.e by comparing pre existing codes with authorized subscriber [telephone number of

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authorized subscriber] Cambria shows retrieving codes/template to match with received code/template which corresponds to the telephony device further programmed to utilize address to retrieve an item of information related to the object because telephone number [address] has to be associated with authorized subscriber in the database and furthermore Cambier in col. 6, lines 12-15, states " If the user is authorized , the cellular provider enables the call placement").

Regarding claims 32-33, Cambier discloses telephony device comprise hand-held computer and a cell phone (Cambier, in figure 9A shows cell phone and this cell-phone and Cambria in col. 6, 16-17, states telephone processor which corresponds to hand held computer).

Regarding claim 34, Cambier discloses identify the object with by applying multiple algorithm and identify image as a function of the confidence level (Cambria, in col. 4, lines 30-34, states "imager acquires images of an iris for use conventional image processing and comparison routines, i.e Cambier by using comparison routines [multiple] Cambria shows identifying the object with by applying multiple algorithm and given multiple comparison routines, iris images can be identified as a function of the confidence level i.e how routines successfully identified the iris).

Regarding claims 36-37, Cambier disclose object is not coded and identifying a bar code or other symbols (See Cambier, col. 6, lines 9-10, template of iris is encrypted/decrypted or this is an "optional" i.e object is not coded and Cambier is identifying iris which is image symbol).

Regarding claim 38, Cambier disclose the service is hosted on a computer distance to the telephony device (Cambier, in col. 6, lines 8-9, states "mobile switching service performing comparison of the iris template and iris template is transferred to mobile switching service using cell phone i.e Cambria service is hosted on the computer for comparison and distance to the telephony device [cell-phone]).

Regarding 39, Cambier discloses service is programmed to select the address from plurality of address of address that provide content in a format suitable for display (Cambria, col. 6, lines 10-12, codes of authorized user [telephone number] is selected from database/memory i.e service is programmed to select the address from plurality of address of address and figure 6 [block 376] shows mobile phone rovider transmitting a transmit authorization which is a format suitable for display).

Regarding claim 40-41, Cambier discloses commercial transaction related to object and telephony device is programmed to use the address to conduct a commercial transaction (Cambria, col. 3, lines 53-55, system of Cambier is used to authenticate user which can be for car rental place which is a commercial transaction and Cambria, col. 6, lines 10-12, codes of authorized user [telephone number] is selected from database/memory which corresponds to telephony device is programmed to use the address to conduct a commercial transaction).

Regarding claims 42-44, Cambier discloses use of address and the item of information to initiate software process, telephone call, radio transmission (See Cambier, col. 6, lines 12-14, based on the comparison of iris image [authorization] the cellular provider initiate a call placement to user which is same initiate software process

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of transmission of telephone call, [call placement], telephone call, radio transmission [cell phone calling]).

Regarding claim 45, Cambier discloses using address and the item information to send data to a website (Cambier, in figure 11, shows phone and communication server, col. 6, lines 15-18, Cambier in col. 14, lines 56-65, states "the wireless Application Protocol have been developed to extend internet content and services to the cellphone industry. An encoded request for authentication and identity is sent to the origin server. An encoded positive identification or negative identification is returned [address]. This corresponds to using address [returned positive or negative identification to cell phone] and the item information to send data to a website [internet]).

Regarding claim 46-47, Cambier discloses telephone device display graphics and audible sound (Cambria, figure 9A and 9C, Cambier e shows digital camera with focus assessment and figure 9A also shows cell-phone therefore Cambria system can display graphics and produce audible sound).

Remarks

6. Applicant's response filed on 9/20/2004, Applicant argued the following:

1. The office action rejected claims 35 for failing to meet the written description requirement of section 112. The application disagrees because support for the rejection claim is contained in provisional application. Provisional application states "If there is no match within a specified tolerance, then a message is returned indicating this situation and the user is advised to re-image under better condition.

Examiner disagree with applicant that support for claim 35 is present in the instant application or provisional application. Claim 35, recites "receive from telephony device a second image containing the objected and to further identify the object as function of data contained in both images". Examiner has not found such disclosure in provisional application and nor Examiner has found disclosure in the provisional application "If there is no match within a specified tolerance, then a message is returned indicating this situation and the user is advised to re-image under better condition". Furthermore statement "If there is no match within a specified tolerance, then a message is returned indicating this situation, and the user is advised to try to re-image under better conditions" does not mean identify the object as function of data contained in both images. Statement means identify object based on the first image or identify the object based on the second image [re-image of the object under better condition].

2. Cambier fails to disclose identifying an object within the image and utilization of an address to retrieve an item of information

Examiner disagree with Applicant's interpretation of Cambier reference. Cambier in col. 6, lines 7-10 states "Mobile telephone service or other comparison controller system receives iris template and compared with iris template stored in the memory or database for identification and authorization of the user". This statement in the Cambier reference clearly corresponds to identifying an object within the image. Cambria, in col. 6, lines 9-12, states code of authorized subscriber is compared to pre existing codes in the memory or database i.e by comparing pre existing codes with

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authorized subscriber [telephone number of authorized subscriber] codes Cambria shows retrieving codes/template to match with received code/template which corresponds to the telephony device further programmed to utilize address to retrieve an item of information related to the object because telephone number [address] has to be associated with authorized subscriber in the database.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact Information

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherali Ishrat whose telephone number is 703-308-9589. The examiner can normally be reached on 8:00 AM - 4:30PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Boudreau can be reached on 703-305-4706. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

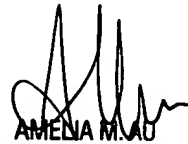


Ishrat Sherahli

Patent Examiner

Group Art Unit 2621

January 17, 2005



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